

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Criminal No. 07-174(1) (JRT/JJG)

Plaintiff,

v.

**MEMORANDUM OPINION AND ORDER
DENYING MOTION FOR
COMPASSIONATE RELEASE**

ANTWOYN TERRELL SPENCER,

Defendant.

Jeffrey S. Paulsen, Andrew S. Dunne, James S. Alexander, and Michael L. Cheever, **UNITED STATES ATTORNEY'S OFFICE**, 300 South Fourth Street, Suite 600, Minneapolis, MN 55415, for plaintiff.

Antwoyn Terrell Spencer, BOP Reg. No. 14781-041, FCI Sandstone, P.O. Box 1000, Sandstone, MN 55072, *pro se*.

Defendant Antwoyn Terrell Spencer is currently serving a 324-month sentence for conspiracy to distribute cocaine and crack cocaine, attempted possession with intent to distribute cocaine, and money laundering. Spencer asks the Court to reduce his sentence and grant him compassionate release because of the ongoing COVID-19 pandemic. Because he did not first request the Bureau of Prisons ("BOP") to file a motion on his behalf, as required by 18 U.S.C. § 3582(c)(1)(A), the Court will deny Spencer's Motion for Compassionate Release without prejudice.

BACKGROUND

Spencer is currently incarcerated at the Federal Correctional Institution in Sandstone, Minnesota. *Inmate Locator*, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc> (last visited Sept. 25, 2020). In September 2007, Spencer was found guilty of conspiracy to distribute five kilograms or more of cocaine and fifty grams or more of crack cocaine, attempted possession with intent to distribute approximately eight kilograms of cocaine, and money laundering. (Jury Verdict at 1–3, Sept. 18, 2007, Docket No. 144.) On January 15, 2009, Spencer was sentenced to a 324-month term of imprisonment. (Sentencing J. at 2, Jan. 15, 2009, Docket No. 294.) Spencer’s current projected release date is September 17, 2030. *Inmate Locator*.

On May 20, 2020, Spencer filed a Motion for Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A), arguing that he should be released because he is susceptible to suffering adverse consequences from COVID-19. (Mot. for Compassionate Release at 1, May 20, 2020, Docket No. 470.) Spencer claims to suffer from chronic allergies and that he has to breath in increased amounts of dust and mold while confined to his cell during the pandemic. (*Id.* at 1–2.) The United States opposes the Motion. (Mem. Opp., June 16, 2020, Docket No. 475.)

DISCUSSION

The First Step Act, passed in December 2018, amended the procedure for compassionate release. See First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194,

5239 (2018). It allows defendants, in addition to the BOP, to move for compassionate release. *Id.* (codified at 18 U.S.C. § 3582(c)(1)(A)). However, a defendant may only bring such a motion “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A). In short, the First Step Act allows a court to modify a term of imprisonment based on a defendant’s motion only when the defendant has first requested the BOP to bring a motion on the defendant’s behalf and such a request has either been rebuffed or lapses. *Id.*

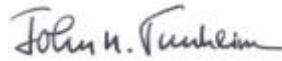
Because Spencer has not demonstrated that he requested the BOP to bring a motion on his behalf before filing this Motion, the Court cannot consider the merits of his arguments at this time.¹ Accordingly, the Court will deny Spencer’s Motion for Compassionate Release without prejudice.

¹ Although the Court will not reach the merits of Spencer’s Motion, the Court will note that he likely faces a difficult path to demonstrate that a sentence reduction is warranted because of extraordinary and compelling reasons. Allergies are not among the conditions known to increase the risk of suffering severe illness from COVID-19. See *People with Certain Medical Conditions, Coronavirus Disease 2019 (COVID-19)*, Ctrs. for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last updated Sept. 11, 2020); see also U.S.S.G. § 1B1.13 cmt. n.1(A) (listing serious conditions that substantially diminish a defendant’s ability to provide self-care).

ORDER

Based on the foregoing and on all the files, records, and proceedings herein, Defendant's Motion for Compassionate Release [Docket No. 470] is **DENIED without prejudice.**

DATED: October 16, 2020
at Minneapolis, Minnesota.



JOHN R. TUNHEIM
Chief Judge
United States District Court